

Shepard Convention Services, Inc. and International Alliance of Theatrical Stage Employees, AFL-CIO. Case 10-RC-14179

August 3, 1994

ORDER GRANTING REQUEST

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On March 23, 1994, the National Labor Relations Board issued a Decision on Review and Order in which the Board modified the Regional Director's Decision and Direction of Election by utilizing the voting eligibility formula as set forth in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970). The Board's modification resulted in a substantial increase in the number of eligible voters in the election scheduled for May 21, 1994. After receipt of the Board's Order, the Regional Office contacted the parties to establish election arrangements. On April 11, 1994, the Petitioner requested that the election be conducted by mail ballot, arguing that "there will be a large number of eligible voters that will be on-call workers [and] [t]herefore, mail ballot would be the most appropriate election to hold under the circumstances." By letter dated April 13, 1994, the Regional Director denied the Petitioner's request observing that:

Mail ballot elections are generally conducted where long distances are involved or where eligible voters are scattered because of their duties. Neither situation is present herein. Moreover, because of the absence of direct Board supervision of voting procedures, mail ballots are more likely to result in objections that cannot be as readily resolved as when the voting procedures are carried out in the presence of a Board agent.

On April 15, 1994, the Petitioner filed with the Board in Washington, D.C., a Special Request for Leave to Appeal the Regional Director's Decision.¹ The Petitioner argues that: (1) the place of work "is not centralized and productions take place all over the city in various venues"; (2) "most exhibition workers are often forced to supplement their income with other jobs making an on-site election difficult and costly due to the fact that many workers would lose wages at other jobs"; (3) "[m]ail ballot elections are likely to reduce 8(a)(1) objections as any intimidating or coercive behavior is effectively eliminated"; (4) "[t]he Board saves time and money by not having one or more of its agents supervise an on-site election"; and (5) "the Board reduces objections based on confusion of voter identity as the *Excelsior* list only provided an

initial rather than a full first name" and asserts that the *Excelsior* list is deficient.

On April 20, 1994, the Employer filed an Opposition to Petitioner's Special Request for Leave to Appeal the Regional Director's Decision, contending that the manual election arrangements established by the Region provide each eligible voter "plenary opportunity to cast a vote if he or she so desires" because the manual election arrangements provide for two "strategically placed" voting centers "at opposite ends of town" and that given "the geographical scope of the City of Atlanta, it is unlikely that any voter will be requested to travel more than twenty or thirty minutes to reach a voting poll" and "the polls will be open during the typical lunch time hours of 12:00 p.m. to 2:30 p.m." In regard to the Petitioner's argument that the on-call employees have other employment, the Employer argues that the "Petitioner has presented no evidence to justify this claim, and, as such, this argument must be dismissed as mere conjecture and speculation." The Employer further argues that a manual election under these circumstances is consistent with Agency policy as contained in the Representation Casehandling Manual and that Board policy is to defer to the Regional Director's discretion in regard to election arrangements. Finally, with regard to the *Excelsior* list, the Employer argues that use of only the employee's surname, accompanied by a first initial, is appropriate, citing *St. Francis Hospital*, 249 NLRB 180 (1980).

By motion dated June 21, 1994, the Incumbent Union² also opposed the Petitioner's request, arguing that the Regional Director's decision was consistent with established Board practice.

On May 2, 1994, the Regional Director denied the Employer's request for a showing-of-interest check and, on May 12, 1994, the Employer filed with the Board in Washington, D.C., a request for review of the Regional Director's refusal to require a new showing of interest, citing the long passage of time since the original decision issued and the recent expansion in the breadth of the voting unit determined appropriate by the Board.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, the Board has decided to grant the Petitioner's request for a mail ballot election for the "on-call" employees. The Casehandling Manual lends some support to the Regional Director's decision to deny the Petitioner's request for a mail ballot election. Under the facts herein, however, and noting that a number of the employees

¹ Because the Board did not have enough time to act on Petitioner's request, on April 18, 1994, the Board stayed the election scheduled for May 21, 1994.

² The Southern Joint Board of ILGPNWU, AFL-CIO and its affiliated Brotherhood of Trade-Show and Display Workers Union, Local 349.

may have other employment which may restrict their ability to reach the polls, the Board finds that the Regional Director abused his discretion by denying the Petitioner's request for a mail ballot for the "on-call" employees.³ Accordingly,

IT IS ORDERED that the case is remanded to the Regional Director for Region 10 for further appropriate action consistent with this Order.

MEMBER STEPHENS, dissenting.

I would not grant the Petitioner's appeal for a mail ballot election.

The Regional Director denied the Petitioner's request, in accord with the directive set forth in Section 11336 of the Casehandling Manual. Thus, there was no mutual agreement among the parties to utilize mail ballots nor any finding that manual balloting here would not be feasible. Moreover, the Regional Director was not satisfied that either the employees were widely scattered or that long distances were involved. To the extent that eligible employees may be working at sites away from the Employer, the Regional Director made

³ The Petitioner's request to modify the *Excelsior* list by requiring that the list contain the complete names of eligible voters is denied as premature without prejudice to renewal in the objections process. The Employer's request for a further check of the Petitioner's showing of interest is denied as lacking in merit.

manual balloting more readily accessible by designating a second polling place, situated across town from the Employer's facilities.

As the Intervening Union correctly insists, a Regional Director has broad discretion in determining whether to hold an election in whole or in part by mail ballot. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines*, 120 NLRB 1343, 1346 (1958). Under such a deferential standard, our scope of review therefore is a relatively narrow one.

In my view, the record before us does not establish that the Regional Director abused his discretion. Holding to the contrary, my colleagues rely principally on the Petitioner's contention that many eligible employees may be engaged in other employment so as to restrict their ability to go to the polls. However, no evidence has been offered in support of this assertion. Likewise, the Petitioner has offered no evidence to establish the inadequacy of the accommodation which the Regional Director did provide through the second polling site.

Under the circumstances, there is no warrant for the Board to second-guess the Regional Director's decision not to order balloting by mail.